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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,424	07/09/2004	GREGORY A. KAEPP	81105266DIV	4423

32242 7590 10/13/2004

DYKEMA GOSSETT PLLC
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ANN ARBOR, MI 48104

EXAMINER

HURLEY, KEVIN

ART UNIT PAPER NUMBER

3611

DATE MAILED: 10/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/710,424

Applicant(s)

KAEPP ET AL.

Examiner

Kevin Hurley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☒ Claim(s) 1-6 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Information Disclosure Statement

1. The references cited in the IDS dated 13 July 2004 have been crossed out as they were already cited in the IDS filed 9 July 2004.

Claim Objections

2. Claims 1-6 are objected to because of the following informalities: the claim status identifiers ("previously claim ...") for claims 1-6 are improper. Only one of the seven claim identifiers (original),(currently amended),(canceled),(withdrawn),(new),(previously presented) and (not entered) should be used. Applicant should provide a new copy of the claims with the proper claim identifiers. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

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the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (6,139,044) in view of Morrison.

Smith et al. discloses a bumper assembly having a bumper cover 50 with an aperture for accessing a hitch receiver 42.

Smith et al. fails to disclose providing an access door engaged to the receiver.

Morrison discloses a method for providing an access door for concealing a hitch receiver including providing an access door 10 having an outer decorated surface 24 and an inner surface, with said access door further having an attaching bracket 30 mounted to said inner surface, with said bracket being adapted for engagement with said hitch receiver, and with said access door being sized so as to engage with said bumper cover and extending about the periphery of said aperture, so as to generally close said aperture, thereby concealing said hitch receiver; and installing said access door upon said vehicle by engaging said attaching bracket with said hitch receiver, thereby placing the access door in contact with the bumper cover at the periphery of said aperture.

It would have been obvious at the time the invention was made to apply the method disclosed by Morrison to the bumper assembly disclosed by Smith et al. in order to cover up and decorate the hitch receiver when not in use.

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6. Claims 4-6 include the use of the phrase “adapted”. It has been held that the recitation that an element is “adapted” is not a positive limitation but only requires the ability to perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138 (CCPA 1946).

It is noted that the “bumper assembly” is recited only as an work object. “Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim.” Ex parte Thibault, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, “[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims.” In re Young, 75 F.2d 966, 25 USPQ 69 (CCPA 1935) (as restated in In re Otto, 312 F.2d 937, 136 USPQ 458, 459 (CCPA 1963)).

7. Claims 4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith et al. (6,260,874).

Smith et al. discloses an access door 10 adapted to conceal a tubular hitch receiver mounted within a bumper assembly of an automotive vehicle, wherein said bumper assembly has a bumper cover with an aperture for accessing the hitch receiver, with an outer surface and an inner door further having an attaching said inner surface, with said attaching bracket being adapted for telescopic engagement with said hitch receiver, and with said access door being sized so as to said access door having surface, with said access bracket mounted to engage said bumper cover and extending about the periphery of said aperture, so as to engage said bumper cover and extending about the periphery of said aperture, so as to generally close the entirety of

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said aperture, thereby concealing said hitch receiver, said access door further comprising a spring loaded latch 39.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al., as applied to claims 1-2 above, and further in view of Randall (3,596,926).

Smith et al., as modified above, discloses the claimed invention except the access door is not tethered to the bumper assembly.

It is well known in the art, as taught by Randall, to tether a cover to a towing vehicle, in order to prevent loss of the cover.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Smith et al. by tethering the door to the bumper, in view of Randall, in order to prevent loss of the door.

11. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. '874 in view of Randall.

Smith et al. discloses the claimed invention except the access door is not attached to a tether.

It is well known in the art, as taught by Randall, to attach a tether 36 to a cover 11 in order to prevent loss of the cover.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Smith et al. by attaching a tether to the cover, in view of Randall, in order to prevent loss of the cover.

Conclusion


12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited references disclose hitch receiver covers.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Hurley whose telephone number is 703-308-0233. The examiner can normally be reached on Monday-Friday 9:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 703-308-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kevin Hurley
Primary Examiner
Art Unit 3611

September 29, 2004